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Page 1

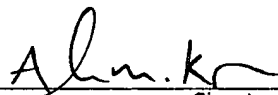
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)
		3598-2
Application Number		Filed
09/828,226		April 9, 2001
First Named Inventor		McIntyre
Art Unit	Examiner	
3624	D. Felten	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the <input type="checkbox"/> Applicant/Inventor <input type="checkbox"/> Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> Attorney or agent of record <u>36,178</u> (Reg. No.) <input type="checkbox"/> Attorney or agent acting under 37CFR 1.34. Registration number if acting under 37 C.F.R. § 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*</p> <p><input checked="" type="checkbox"/> *Total of 1 form/s are submitted.</p>		


Signature
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December 20, 2005
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REASONS FOR REVIEW

With reference to the Office Action, all of the independent claims have been rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,112,189 to Rickard et al. As is clear from the file history, this Office Action represents the sixth Action on the merits in the subject application. In this sixth Office Action, the cited Rickard patent is no closer to the subject matter of the claimed invention than any of the previously-cited references.

The Rickard patent references satisfaction zones based on multiple transaction parameters, then attempts to find a discrete point where opposing party zones overlap. The system defines/assembles special and complex products and deals for those with special needs. The system then attempts to build markets and finally to define terms that are agreeable to all parties in a transaction. In contrast with the subject matter of the claimed invention, as discussed in more detail below, Rickard lacks any teaching or suggestion of what to do in the event the terms are not agreeable to all parties (i.e., there is no overlap), and Rickard additionally lacks any teaching or suggestion of bids or selling prices that vary with time.

Independent claim 1 defines method steps including receiving a lower limit price for a product from the seller, and receiving an upper limit bid for the product from the buyer. Claim 1 specifies that if an overlap region does not exist between the seller lower limit price and the buyer upper limit bid, the computer system processes the transaction without seller or buyer input by setting a theoretical price point between the lower limit price and the upper limit bid. With regard to the theoretical price point, the Office Action seems to appreciate that Rickard lacks a teaching of this feature of the invention ("Rickard disclose a maximum point but fails to disclose a price point per se."). Although this concept of the invention is very clearly a core feature of the invention, as evidenced by the discussion of this feature of the invention in each of the five previous responses to Office Actions where this feature of the invention was lacking in the cited references, the Examiner dismisses this subject matter as "an obvious expedient." In particular, the Office Action provides that "[s]ince the maximum point is related to mutual satisfaction and that one of the parameters for mutual satisfaction is price for a trades security, it would have been obvious . . . to incorporate price as one of the variables that the system would use to determine the negotiations between parties (particularly when trading securities)." The Rickard patent, however, does not support this contention. Applicant does not disagree that one of the parameters for mutual satisfaction is price in any transaction. Claim 1 of the present application, however, embodies a scenario where no overlap region exists and thus "mutual satisfaction" on the original parameters is entirely unreachable (i.e., the buyer upper limit bid, which is the buyer's maximum, does

not exceed the seller's lower limit price, which is the seller's minimum). The Office Action concludes that "an artisan at the time of the invention would employ such a variable being a notoriously old and well known negotiable feature which is conventionally used within the art" and concludes that this feature of the invention "would have been an obvious expedient to one of ordinary skill in the art." Applicant respectfully disagrees with this conclusion.

The Rickard patent purports to provide a method and system that calculates a mutual satisfaction between negotiating parties and maximizes the mutual satisfaction over a range of decision variables. See, e.g., column 2, lines 54-59. A computer calculates decision variable values yielding a maximum mutual satisfaction and provides this output to the parties. See column 3, lines 9-11. In the Detailed Description, Rickard provides that "[i]n its broadest sense, the present invention is a tool that can discover areas of overlap in negotiating positions between parties having a mutual desire to enter into some type of agreement." See column 5, lines 24-31. In contrast with this clearly stated "broadest concept" of the Rickard patent, the invention defined in claim 1 is a negotiating tool that can facilitate a transaction when there are no areas of overlap. In continuing with this theme in the Rickard patent, Rickard provides that "the system calculates the mutual satisfaction by determining the area of overlap between the joint satisfaction function and the offering party's satisfaction function." Column 6, lines 7-10. With reference to the steps outlined in Fig. 12 of Rickard, Rickard describes a method for automatically determining a set of terms of an agreement based on the noted degrees of satisfaction. In step 127, an agreement according to this set of terms and decision variables is automatically executed. Column 6, lines 19-43. This automatic execution is in direct contrast with the theoretical price point defined in claim 1 as the theoretical price point is defined outside of any buyer or seller parameter when no overlap region exists. Since the theoretical price point is above the buyer's upper limit bid and below the seller's lower limit price, using the Rickard system, the degree of satisfaction for each party at the theoretical price point would presumably be 0. As such, the Rickard system would be unable to process such a transaction. Moreover, Rickard describes a securities trading example with reference to Fig. 17 where a composite function represents a mutual degree of satisfaction to execute a particular trade. After determining an absolute maximum value of the composite function, a region about the absolute maximum value of the composite function is defined, and in step 173, a trading price, a trading volume and a trading party are determined for each of the different securities so that a resulting value of the composite function lies within the region defined in step 172. See column 7, line 9 - column 8, line 9. Again, it is critical that the sale parameters in the Rickard patent lie within the satisfaction region, and Rickard is silent with regard to parameters that lie outside of any such region such as the theoretical price point set by the system of the present invention when an overlap region does not exist.

Independent claims 19 and 20 define related features.

Independent claim 13 defines a step of receiving a lower limit price range from the seller that varies with time, and if an overlap region exists between the seller lower limit price range based on time and the buyer upper limit bid, a price point is set for the product within the overlap region that is based on the lower limit price and the upper limit bid. Claim 14 defines related subject matter from the buyer's perspective, defining steps of receiving a lower limit price for a product from the seller, and receiving an upper limit bid range from the buyer that varies with time. Claim 25 defines related features. Although these independent claims are included in the general discussion of the Rickard patent, there is no reference to any teaching or suggestion in this general discussion of subject matter in the Rickard patent that even remotely meets these features of the invention. In fact, Applicant submits that Rickard lacks any teaching or remote suggestion of such subject matter.

In a related context, however, the Office Action references dependent claims 15 and 16, which define a step of additionally receiving an expiration relating to the product and by receiving a lower limit price range from the seller that varies with time to the expiration, and additionally receiving an expiration relating to the upper limit bid and by receiving an upper limit bid range from the buyer that varies with time to the expiration, respectively. The Office Action references particular sections in the Rickard patent that purportedly meet these features of the invention. As noted, however, these sections do not in any manner teach or remotely suggest this important feature of the invention. Figure 13 in Rickard depicts an exemplary method for automatically determining trading prices, volumes, and trading parties to a simultaneous trade of different securities. Nowhere in Figure 13 does Rickard reference any price or bid range that varies with time. The Abstract is similarly silent. Column 2, lines 60-65 merely summarily references automatic negotiating where a computer accepts a satisfaction profile from an offering party who defines his degree of satisfaction to agree to a range of terms upon which the party is desirous of negotiating as a function of the relevant decision variables. Even if somehow it can be concluded that 'time' is embodied in the "range of terms," nowhere does this section or any section in the Rickard patent suggest that a price or bid varies over time. Column 3, lines 12-53 is similarly silent rather referencing terms such as cost, volume, parties, etc. Column 6, lines 4-18 references the system calculation of the satisfaction function and the determination of a maximum point for mutual satisfaction, which establishes the terms for each of the parties. Column 7, lines 28-33 references a simultaneous trade of different securities, where data is mapped into a function expressing degrees of satisfaction over a desired range of costs. It is clear from this discussion that this "range of costs" relates to the different securities and does not in any manner reference a range for a bid or price that varies with time. Finally, column 8, lines 10-19 describes

predetermined criteria for selecting trading data such as trading volume, trading price, etc. This section similarly lacks even a remote reference to a seller's price or buyer's bid that varies with time.

With regard to claim 17, step (b) of claim 17 defines the step of receiving an upper limit bid for the product from the buyer, wherein step (b) is practiced by allowing only one bid for the product from the buyer. Although claim 17 is included in the rejection and the general discussion of the Rickard patent, the Office Action does not reference a single teaching in the Rickard patent that meets this feature of the invention. In this context, the Rickard patent does not describe a typical transaction between a buyer and a seller. Rather, as discussed above, the Rickard method utilizes a satisfaction function among multiple parties and multiple transaction parameters. Since such a system is entirely diverse to that of the claimed invention, nowhere does the Rickard patent reference a scenario where a buyer is permitted only one bid for a product.